

REMARKS

1. Applicant notices that at page 3, paragraph 2, the Examiner has indicated that the application contains a computer program listing. The Examiner has indicated that the program must be submitted as part of the specification and that it must appear after the detailed description of the invention but before the claims. The Examiner also indicates that in such case the program must be in the form of direct printouts from a computer's printer with dark, solid, black letters not less than 0.21 cm high on white, unshaded, unlined paper and that the sheets should be submitted in a protective cover.

Applicant notes that 37 CFR 1.96 (b) is concerned with computer program listings. The regulation states that "a computer program listing for the purpose of this section is defined as a printout that lists an appropriate sequence of the instructions, routines, and other contents of a program for a computer." Applicant assumes that, in this connection, the Examiner is referring to the program appears listed on pages 27-30 of the application. However, the program presented in the application is not a listing within the meaning of 37 CFR 1.96(b). That is, the Applicant has identified the instructions of a program but the instructions do not comprise a "printout" of the program. Rather, the program shown in the specification is a section of code that was presented by the inventors to Applicant's attorney within an invention disclosure, surrounded at either end by textual material. As such, Applicant has included this program as an example of a program that could be used as identified in the specification. Accordingly, it is not possible for Applicant to provide a "printout" as required by the Code of Federal Regulations because such printout was not available at the time the application was prepared. Applicant considers the program as it appears in the specification to be in compliance with the Code, but would be very glad to discuss the matter with the Examiner should the Examiner still object to the program as provided in the specification.

2. Claim Objections.

Applicant has amended Claim 30 in accordance with the Examiner's comments.

3. Claim Rejections – 35 USC § 1.12.

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Applicant has amended Claim 11 to identify the two signals and to indicate that the signal of line 4 is the second of the two signals. Accordingly, Claim 11 is deemed to be in compliance with 35 USC §1.12.

4. Claim Rejections – 35 USC § 101.

Claims 36-47 have been rejected under 35 USC § 101 because the Examiner deems the claimed invention directed to non-statutory subject matter.

Applicant respectfully disagrees. In view of the Court of Appeals for the Federal Circuit holding in the Beauregard opinion, Applicant is permitted to claim a computer implemented process or functionality for a computer implemented process embodied in a tangible medium. Applicant's base Claim 36 is not directed to non-functional descriptive material. Rather, Claim 36 describes a functional element of a computer program. Thus, the claim states "said basis set being stored in a memory for use by a processor during multi-spectral analysis." The basis set is an integral functional element of a computer that operates the processor during multi-spectral analysis. As such, Applicant submits that Claim 36 does recite patentable subject matter.

5. Claim rejections – 35 USC § 102

Claims 1-9, 11-14, 17, 19, 22-32, 34-37, 40, 42, and 45-47 have been rejected by the Examiner under 35 USC §102(e) as being anticipated by Khalil et al. Responsive thereto, Applicant submits herewith a Declaration under 37 CFR 1.132 executed by Stephen Malin. Mr. Malin is an inventor of the subject matter claimed in the present patent application. In his Declaration, Mr. Malin unequivocally declares that he conceived the subject disclosed in U.S. Patent No. 5,747, 806 (the Khalil patent) which patent is relied on in the above-mentioned rejection. As such, the rejection under 35 USC § 102(e) is not based upon an invention "of another." Accordingly, Applicant respectfully requests withdrawal thereof.

6. Claim rejections – 35 USC §103


Claims 10, 15-16, 18, 20, 21,33,38,39,41, 43, and 44 have been rejected by the Examiner under 35 USC §103 as being unpatentable over Khalil in view of Bentsen or Robinson.

Applicant respectfully submits that the fact that the rejection of the various claims under 35 USC §102(e) have been overcome renders the claim rejection under 35 USC §103 moot.

CONCLUSION

In view of the foregoing, Applicant deems the invention as claimed to recite allowable subject matter. Applicant therefore respectfully requests Examiner's withdrawal the rejections herein and allow application to issue as a United States patent. Should the Examiner deem it helpful, the Examiner is encouraged to call the Applicant's attorney at (650) 851-7138.

Respectfully Submitted,


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